

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BUILDING CODE APPEALS BOARD  
DOCKET NO.: 11-962

\_\_\_\_\_  
7-41 Charlton, LLC,  
Appellant

v.

\_\_\_\_\_  
City of Everett,  
Appellees  
\_\_\_\_\_

**BOARD'S RULING ON APPEAL**

**Introduction**

This matter came before the State Building Code Appeals Board ("Board") on appellant's appeal filed pursuant to G.L. c.143, §100 and 780 CMR 122.1. In accordance with 780 CMR 122.3 the appellant petitioned the Board to overturn the decision of the City building official based on the Seventh Edition of the Massachusetts State Building Code ("Code"). For the following reasons, the appeal is hereby **GRANTED**.

The appellant requested that the Board overturn the decision of the City Building Inspector to revoke the appellant's building permit. Attorney Christopher Malloy represented the appellant. John Field, City Building Inspector appeared on behalf of the appellee. All witnesses were duly sworn.

**Procedural History**

The Board convened a public hearing on January 6, 2011, in accordance with G.L.c. 30A, §§10 & 11; G.L.c. 143, §100; 801 CMR 1.02; and 780 CMR 122.3. All interested parties were provided with an opportunity to testify and present evidence to the Board.

**Findings of Fact**

This matter turns on the review of the applicable provisions of the State Building Code. The Board bases the following findings upon the testimony presented at the hearing. There is substantial evidence to support the following findings:

1. The property at issue is located at 27-41 Charlton St., Everett, MA.
2. Fred Keefe of Pinnacle Properties Management is the Managing Agent for the appellant.
3. The project is a renovation and addition of an existing industrial structure into a multifamily residential property which will contain approximately 180 units.
4. The original building permit was issued on May 25, 2005.
5. A 6 month extension for the permit was granted in October of 2005.
6. The City building inspector sent an email to the appellant on June 5, 2006 stating that he was satisfied that work had commenced.
7. The appellant submitted letters and architectural reports to the city between October 2006 and May 2010.

8. On December 11, 2008, the City sent a letter to the appellant to board up the property.
9. In October 2010, the appellant requested a reissuance of the building permit.
10. On November 2, 2010, the appellee denied the request for reissuance and stated that the permit expired in October of 2007.

### **Analysis**

#### **A. Jurisdiction of the Board**

There is no question that the Board has jurisdiction to hear this case. The governing statute provides that:

Whoever is aggrieved by an interpretation, order, requirement, direction or failure to act by any state or local agency or any person or state or local agency charged with the administration or enforcement of the state building code or any of its rules and regulations, except any specialized codes as described in section ninety-six, may within forty-five days after the service of notice thereof appeal from such interpretation, order, requirement, direction, or failure to act to the appeals board. G.L. c.143, §100.

The issues giving rise to this matter directly implicate provisions of the Code. As such, this Board has jurisdiction to decide this case pursuant to G.L. c. 143, §100.

#### **B. State Building Code requirements**

The issue is whether the City's determination that the building permit expired was correct. The applicable regulation states, "Any permit issued shall be deemed abandoned and invalid unless the work authorized by it shall have been commenced within six months after its issuance; however, for cause, and upon written request of the owner, one or more extensions of time, for periods not exceeding six months each, may be granted in writing by the building commissioner or inspector of buildings. Work under such a permit in the opinion of the building commissioner or inspector of buildings, must proceed in good faith continuously to completion so far as is reasonably practicable under the circumstances. It is the sole responsibility of the owner to inform, in writing, the building commissioner or inspector of buildings of any facts which support an extension of time. The building commissioner or inspector of buildings has no obligation under 780 CMR 111.7 to seek out information which may support an extension of time. The owner may not satisfy this requirement by informing any other municipal and/or state official or department..." 780 CMR 111.8

The appellant submitted documentation and testified that work never ceased, that they continued to submit documentation regarding the work to the City and that even if the permit did expire then it would not have been until 2008 and the Permit Extension Act would apply, allowing an automatic 2 year extension to continue work.

The City Building Inspector testified that according to the building officials' observations, work stopped in 2006. The City Building Inspector also stated that this was not communicated in writing to the appellant. He asserted that the "board up" order was because work had stopped and that therefore the permit had expired. However, the "board up" letter dated October 2007 did not state that the permit had expired.

The Board recognized that it is not the building officials' obligation to continuously check in with the builder. However, the Board stated that when the appellant is submitting regular documentation to the building official that the appellee had some obligation to respond if they believed that the work had stopped or was not continuing in a reasonable manner and that the permit had expired.

Because the appellant continued to submit documentation to the City and continued to do some work on the project and because the City never notified the appellant that work had stopped and the permit expired until 2 years later, the appeal may be granted.

### **Conclusion**

A motion was made by Alexander MacLeod and seconded by Jacob Nunnemacher to **GRANT** the appeal and relief to the appellant to continue with construction and to overturn the building officials ruling to revoke the permit based on non-continuous work for a period of 6 months and because it was shown by the appellant that work had continued, although slowly and a small amount and because the appellant had submitted construction reports in a somewhat timely fashion. Further, the Board determined that the other Code sections cited in the appeal were not applicable to this case.



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Jacob Nunnemacher

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Alexander MacLeod

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Doug Semple

*Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to Superior Court in accordance with G.L. c.30A, §14 within 30 days of receipt of this decision.*

DATED: January 25, 2011